SUPREME COURT, U.S.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 525

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY,

Petitioner,

vs.

MRS. GEORGE NOTHNAGLE, ET AL.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT AND BRIEF IN SUPPORT THEREOF.

H. L. Filer,
Counsel for Petitioner.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 525

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY,

Petitioner,

vs.

MRS. GEORGE NOTHNAGLE, ET AL.,

Respondents

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT.

The New York, New Haven and Hartford Railroad Company, petitioner, respectfully prays for a writ of certiorari to review the judgment of the Supreme Court of Errors of the State of Connecticut entered November 25, 1952 in its Case No. 3675—*Mrs. George Nothnagle, et al.* v. *The New York, New Haven and Hartford Railroad Company.*

Statement of the Matter Involved

Petitioner is a corporation engaged in interstate commerce and passenger transit for hire. On October 5, 1949,

Mrs. George Nothnagle, respondent, purchased a ticket for passage upon trains operated by petitioner from Meriden, Connecticut, to Fall River, Massachusetts. That same day she boarded a train operated by petitioner at Meriden, Connecticut, at 11:19 A.M. and rode to New Haven where she arrived with her baggage shortly after 11:30 A.M. At New Haven she alighted from the train to the platform of the station owned, operated and maintained by petitioner and was approached by a Red-Cap, an employee of petitioner, who solicited her baggage. She surrendered her baggage to the Red-Cap with orders to have the baggage returned to her at the train leaving for Fall River on Track #8 at 12:40 P.M. The Red-Cap did not return the baggage to her at that time or at any other time. The baggage consisted of a suit-case containing a diamond ring, costume jewelry, two dresses, a suit, underclothing, shoes, and a silver mounted brush and comb, all of which belonged to her, and ties, shirts, pajamas, socks, shorts and handkerchiefs belonging to her husband. The baggage and its contents were reasonably worth $615. (The facts contained in this paragraph are set out in the Finding of the trial court (R. 7 and 8)).

On October 5, 1949, petitioner had on file with the Interstate Commerce Commission a tariff entitled "New England Joint Tariff R. C. No. 3-N" stating the charges for and liability with respect to the handling of hand baggage and other personal effects of passengers by Red-Caps. Paragraph 2 of this tariff stated that petitioner's liability for each piece of baggage or parcel (including its contents) would be limited to $25 unless a greater value was declared in writing by the passenger. No greater value was declared by respondent with respect to the baggage surrendered to the Red-Cap. (The facts contained in this paragraph are set out in the Finding of the trial court (R. 8)).

Suit for loss of the baggage was brought by a writ, sum-

mons and complaint dated December 28, 1949, returnable to the City Court of Meriden on the fourth Tuesday of January 1950 (R. 2, 3). Petitioner filed an offer of judgment of $25 on September 25, 1950 (R. 3). Issue was joined by an Amended Answer dated September 26, 1950. The limitation of liability contained in petitioner's tariff was set out in this Amended Answer as a defense (R. 4). At the trial the attorneys for petitioner and respondent stipulated that all the matters alleged in the respondents' complaint were admitted, that the value of the contents of the baggage be set at $615 and that petitioner's only defense would be the application of the tariff as filed with the Interstate Commerce Commission (R. 9). The trial court, Bogdanski, J., rendered a decision for respondent for $615 (R. 4 and 5) and Judgment was entered in her favor on November 25, 1950 (R. 5 and 6). Thereafter, on January 13, 1951, petitioner appealed to the Supreme Court of Errors of the State of Connecticut. That court held there was no error in the judgment of the trial court in a decision issued November 25, 1942 (R. 14). The court split 3 to 2. The majority opinion was written by Baldwin, J. In this opinion Jennings and Inglis, Js., concurred. Brown, C. J., and Roberts, J., dissented. The majority ruled that the baggage while in petitioner's possession was not in interstate commerce, that the baggage was left for safekeeping and petitioner was liable under Connecticut law as an ordinary bailee for the actual value of the property lost.

Statement of Jurisdiction

Jurisdiction of this Court to review this case by certiorari is conferred by Section 1257 of United States Code, Title 28. This provides that final judgments or decrees rendered by the highest court of a State in which a decision could be had may be reviewed by this Court by writ of certiorari where any title, right, privilege or immunity is specially set

up or claimed under the statutes of the United States. The statute of the United States involved is the Interstate Commerce Act, Section 1 *et seq.* of United States Code, Title 49.

The Supreme Court of Errors of the State of Connecticut is the highest court of that State in which a decision could be had in this case. Article Fifth, Sec. 1 of the Constitution of the State of Connecticut; Section 7674 of General Statutes of Connecticut, Revision of 1949.

The claim of the application of petitioner's tariff, filed with the Interstate Commerce Commission, was raised by petitioner in its Amended Answer (R. 4) and in its claims of law to the trial court (R. 9 and 10). The respondent also put the point in issue by her claims of law. (R. 9). It was considered by the trial court and rejected in his Memorandum of Decision (R. 5) and in the Conclusions contained in his Finding (R. 9). Petitioner, on its appeal to the Supreme Court of Connecticut, assigned error to his Conclusions and to his rejection of its claims of law (R. 11).

The Question Presented.

The question here presented is whether respondent, who was a passenger on petitioner's railroad on a journey from Meriden, Connecticut, to Fall River, Massachusetts, while changing trains at New Haven, Connecticut, gave her baggage to a Red-Cap and never got it back, is bound by petitioner's tariff filed with the Interstate Commerce Commission covering Red-Cap services which contains a limitation of liability of $25.

Reasons Relied On for Allowance of the Writ

1. The Court below erred in holding that respondent's baggage while in petitioner's possession at New Haven was not in interstate commerce.

2. The Court below erred in holding that on the facts respondent's journey was intrastate.

3. The Court below erred in holding that respondent's journey was suspended for a substantial time in New Haven and that suspension interrupted the interstate character of her journey.

4. The Court below erred in holding that respondent was not an interstate passenger during her stay in New Haven.

5. The Court below erred in holding that petitioner was liable to respondent as an ordinary bailee for the actual value of the property lost.

6. The Court below erred in holding that respondent was not bound by petitioner's tariff.

7. The case involves a federal question of substance which has not heretofore been determined by this Court.

Respectfully submitted,

THE NEW YORK, NEW HAVEN AND
HARTFORD RAILROAD COMPANY,
By H. L. FILER,
54 Meadow Street, New Haven, Conn.,
Attorney for Petitioner.

December 22, 1953

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1952

No. 525

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY,

Petitioner,

v.

MRS. GEORGE NOTHNAGLE, ET AL,

Respondents.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

I

The Opinions Below

The opinion of the Supreme Court of Errors of the State of Connecticut in this case is reported as *Mrs. George Nothnagle, et al* v. *The New York, New Haven and Hartford Railroad Company,* 139 Conn.——; 87 A. (2) ——. This decision appears at R. 14 *et seq.*

The memorandum of decision of the City Court of Meriden, the trial court, appears at R. 4 and 5, and the judgment at R. 5 and 6.

II

Statement of Jurisdiction

The jurisdiction of this Court is invoked by Section 1257 of United States Code, Title 28. The judgment of the Supreme Court of Errors of the State of Connecticut was rendered on November 25, 1952. A detailed statement in support of the jurisdiction is contained in the Petition for Writ of Certiorari at page 3.

III

Statement of the Case

The Statement of the case is set out in detail in the Petition For Writ of Certiorari at pages 1, 2 and 3.

IV

Specification of Errors to Be Urged

The Supreme Court of Errors of the State of Connecticut erred:

1. In holding that respondent's baggage while in petitioner's possession at New Haven was not in interstate commerce.
2. In holding that on the facts respondent's journey was intrastate.
3. In holding that respondent's journey was suspended for a substantial time in New Haven and that suspension interrupted the interstate character of her journey.
4. In holding that respondent was not an interstate passenger during her stay in New Haven.
5. In holding that petitioner was liable to respondent as an ordinary bailee for the actual value of the property lost.
6. In holding that respondent was not bound by petitioner's tariff.

V

ARGUMENT

1

The Decision of the Court Below Is Not Correct

There is no argument about the facts in this case. They are few in number and they are very clear. The only problem is drawing a legal conclusion from them.

It is only a short distance from Meriden, Connecticut, to Fall River, Massachusetts, by way of New Haven. Respondent intended to go all the way from Meriden to Fall River and she bought a ticket entitling her to travel the entire distance to Fall River. She started on her journey at Meriden. She had to change trains at New Haven. When she arrived at New Haven she intended to continue her journey because she told the Red-Cap "to have said baggage returned to her at the train leaving for Fall River on Track #8 at 12:40 P. M." (R. 7). She actually continued on her journey to Fall River because the Red-Cap did not return her baggage to her "at that time", i.e., at 12:40 P.M. (R. 7). Her journey was interrupted only because she had no other choice in the matter—she had to change trains. The interval between trains was only 1 hour and 10 minutes. There is nothing in the record to indicate that she did anything but wait in this interval. There is nothing in the record to indicate that the 12:40 train was not the first connecting train to Fall River. There is nothing in the record to indicate that she could have taken any other connecting train and did not.

Respondent had a through ticket from Meriden to Fall River. At Meriden, at New Haven at 11:30 A.M. and at New Haven at 12:40 P.M. her intention was to go to Fall River. The only facts which the lower court mentions are

that the journey from Meriden to Fall River was not continuous and that it was suspended for a substantial time in New Haven. That these facts, in and for themselves, change an interstate trip into one of an intrastate character appears a completely unreasonable conclusion.

The lower court cites no decision in support of its conclusion and in fact there is none. It seems reasonable to conclude that in other instances these same facts did not appear arguable. In *Tilson* v. *Terminal R. Ass'n of St. Louis*, 236 S.W. (2) 42 (St. Louis C. of A., Mo. 1951), and in *Birmingham Terminal Co.* v. *Wilson*, 249 Ala. 397, 31 So. (2) 563 (1947), cases with facts similar to the instant one involving passesgers' bagage lost while in the care of Red-Caps, is was conceded that the plaintiffs were interstate passengers. In *Williams* v. *Jacksonville Terminal Co.* and *Pickett* v. *Union Terminal Co.*, 315 U. S. 386, 86 L. Ed. 914 (1942), this court had before it the right of a railroad company to credit tips received by its Red-Caps against its liability for payment of minimum wages to them. Again it was conceded by both Red-Caps and their employers that the Red-Caps were engaged in interstate commerce. This decision cites the case of *Stopher* v. *Cincinnati Union Terminal Co.*, 246 I. C. C. 41 (1941), where the Interstate Commerce Commission ruled that the terminal company should file a tariff covering Red-Cap service at its station. Whether a passenger was an interstate one also was directly raised in *Washington B. & A Electric Ry. Co.* v. *Waller*, 289 F. 598 (D.C. 1923), which involved the eviction of a negro from an electric car proceeding from Annapolis to Baltimore because of his refusal to sit in the negro section of the car. He had a ticket from Annapolis to Washington but would have been obliged to change at Baltimore to a car which would take him to Washington. The Company pleaded a Maryland segregation law in de-

fense but the court ruled that he was an interstate passesger and the Maryland law did not control. In other cases, passesgers, intending ultimately to cross state lines, have attempted to break their journey and use separate lower local fares than the through interstate one. The courts uniformly have ruled that the real character of the trip must be found and that these subterfuges cannot change the journey which was actually an interstate one into an intrastate one by a break in the journey en route. *Illinois C. R. Co.* v. *Holman*, 106 Miss. 449, 64 So. 7 (1914); *Reynolds* v. *St. Louis Southwestern R. Co.*, 195 Mo. App. 215, 190 S.W. 423 (1916); *Missouri, K. & T. R. Co.* v. *Ashinger*, 63 Okla. 120, 162 P. 814 (1916).

Thus both on the facts and on the basis of somewhat analogous cases the decision of the court below that respondent was not an interstate passenger while waiting at New Haven and therefore was not bound by petitioner's tariff is not correct.

2

The Case Involves a Federal Question of Substance

Services of Red-Caps are provided by railroads at their stations for passengers universally throughout the country. The Interstate Commerce Commission specifically went into the number of Red-Caps in two investigations the results of which are reported in "*In The Matter Of Regulations Concerning Class Of Employees And Subordinate Officials To Be Included Within Term 'Employee' Under The Railway Labor Act*," 229 I. C. C. 410 (1938), and 232 I. C. C. 49 (1939). The Commission found approximately 500 railroad stations at which Red-Cap service is provided.

That the services of Red Caps generally are governed by tariffs similar to the one involved in this case is shown by such cases as *Tilson* v. *Terminal R. Ass'n of St. Louis*,

supra; Kirchoff v. *Southern Pac. Co.*, 68 F.S. 877 (D.C. Calif. 1946); *Birmingham Terminal Co.* v. *Wilson, supra.*

The statute under which these tariffs are filed is the Interstate Commerce Act. The question, therefore, is a federal one.

It was conceded by the court below that if the respondent's baggage was in interstate commerce, respondent would be bound by the tariff (R. 16). The court below ruled that because respondent had to change trains and wait in New Haven for a connecting train, her journey was intrastate and, therefore, the tariff did not apply. Aside from being very unsatisfactory because of the split in the court, the lower court's ruling means that every other time the question comes up involving a passenger who has to change trains such a tariff will not apply. The question can arise wherever Red-Caps work. The application of such tariffs to the respective rights of passengers and liabilities of railroads, therefore, is a question of great importance to all railroads and a final decision thereon by this court is a matter of general public interest.

3

The Question Has Not Heretofore Been Determined by This Court

The court below cited no decisions in support of its ruling. It made reference to the case of *New York Central R. Co.* v. *Mohney,* 252 U.S. 152, 40 S. Ct. 287, 64 L. Ed 502 (1920). This arose out of a train wreck in which plaintiff, an employee of defendant, was injured. He had been riding on an Ohio intrastate pass which exempted the defendant from liability for negligence. Plaintiff intended to continue into Pennsylvania by means of another pass he was to pick up en route. This court ruled he was not an interstate passenger and, therefore, the stipulation on the Ohio pass was invalid as contrary to Ohio public policy. The

basis of the ruling was that the only contract between plaintiff and defendant was the Ohio pass which was in terms intrastate in nature. In contrast to that case, in the present case the contract between petitioner and respondent was the through ticket from Meriden to Fall River.

This court, it is true, has decided cases involving interstate shipments of property. They were relied on by the defendant in the *Mohney* case and are discussed by this court in the course of the opinion. However, they were not used as a basis of the decision.

No other decision of this court could be found even remotely analogous.

Conclusion

The only sound conclusion from the facts is that plaintiff was an interstate passenger, that she continued in this status during her stay at New Haven and that she is bound by the limitation contained in petitioner's tariff. As the decision of the court below is not correct, and the case involves a federal question of substance which has not heretofore been determined by this court, a writ of certiorari should issue to review the judgment of the Supreme Court of Errors of the State of Connecticut.

Respectfully submitted,

THE NEW YORK, NEW HAVEN AND
HARTFORD RAILROAD COMPANY,

Petitioner.

By H. L. FILER,
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New Haven, Conn.
Its Attorneys.

December 22, 1952.